

Attachment #1
Response to Comments

Comment Number	Comment Summary	Response
Comment Letter A: CBD, DOW, NRDC and Sierra Club		
A-1; p. 1	The proposed action and the NSR Wind Energy Project are connected actions.	<p>NEPA does not require that the proposed action and the NSR Wind Energy Project be analyzed as connected actions under NEPA for two reasons.</p> <ol style="list-style-type: none"> 1. As alternative access across private land is feasible, BLM denial of ROW permits would not prevent the private land development (see BLM Handbook H-1790-1 Sec. 6.5.2.1 and Sec. 7.3). Because BLM lacks the authority to prevent the facility's impacts, it is not required to consider them under NEPA. See <i>Department of Transportation v. Public Citizen</i>, 541 U.S. 752, 770 (2004). 2. The NSR Wind Energy Project, which can be built without the proposed action using an alternative route, and the proposed action, which will provide dust control, reduce erosion, and reduce unauthorized motor vehicle access to the Pacific Crest Trail, are not connected actions. See <i>Northwest Resource Information Center, Inc. v. National Marine Fisheries</i>, 56 F.3d 1060, 1068-69 (9th Cir. 1995). Projects may benefit from each other but remain unconnected. <i>Sylvester v. U.S. Army Corps of Engineers</i>, 884 F.2d 394, 400 (9th Cir. 1989).
A-2; p. 2	The EA does not demonstrate the independent utility of the proposed action, and should be analyzed with the NSR Wind Energy Project as a connected action, requiring an EIS.	See response to Comment A-1.
A-3; p. 4	The road improvements and underground transmission and communication lines are interdependent with the wind energy project and should be considered a connected action.	<p>The NSR Wind Energy Project can be built without the proposed action, including the proposed action's underground transmission and communication lines, and so is not interdependent with the proposed action. See <i>Great Basin Mine Watch v. Hankins</i>, 456 F.3d 955, 970-71 (9th Cir. 2006); BLM Handbook H-1790-1 Sec. 6.5.2.1 and Sec. 7.3).</p> <p>See also responses to Comment A-1.</p>
A-4; p. 5	The Private Land Only Alternative is not a viable alternative for accessing NSRE property.	The Private Land Access Alternative (Alternative B) was analyzed to provide a comparison of the potential environmental impacts resulting from the two access alternatives. Alternative B was analyzed as a technically and economically feasible alternative to the Proposed Action. Appendix A of the EA provides engineering

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		plan details for Alternative B. While road development on private land could proceed without public land access, the potential effects of a private land access route were analyzed in the EA to disclose the potential environmental impacts if BLM were to deny the ROW request.
A-5; p. 5	The EA does not discuss why the alternative underground transmission and collector line routes could not be collocated with roads.	In Section 2.8.3 on page 2-18, the EA states that "Underground transmission lines and fiber optic communication lines could not be collocated with the proposed road improvements included in Alternative B. To install the 20,300 linear feet of underground transmission and communication lines, Alternative B would result in approximately six acres of temporary ground disturbance." This temporary ground disturbance would be required to route the underground transmission and communication lines to avoid BLM lands and would not be in the vicinity of (and therefore unable to be collocated with) road improvements proposed as part of Alternative B to the west of NSRE property.
A-6; p. 5	NSRE does not have land use control for the properties included in the Private Land Only Alternative, and feasibility of securing control is speculative.	The alternative of private land access is neither remote nor speculative. If BLM denies access through public land, private land access is reasonably foreseeable and is analyzed as Alternative B in the EA. Projected future development trends as presented in Table 5-3 of the EA indicates that future development of private land is reasonably foreseeable as other similar projects continue to be developed in the area.
A-7; p. 6	The proposed action is connected to the NSR Wind Energy Project because the project PPA schedule would not allow for the time required to secure land control under the Private Land Only Alternative.	Alternative B was analyzed as a technically and economically feasible alternative to the proposed action. The project PPA schedule is beyond BLM's authority and was not a factor used to determine that Alternative A would result in less surface impacts in the affected watershed.
A-8; p. 7	The NSR Wind Energy Project requires a ROW grant from BLM.	If using the private land access road from the West (Alternative B), BLM's Section 25 roads would not be necessary to access private land from the East. Section 25 would have been avoided.
A-9; p. 7	The EA does not evaluate accessing NSRE property from the north.	A feasible northern road route was not proposed. Measured from the intersection of SR 14 and Jawbone Canyon Road, the northern access alternative proposed in the comment letter is approximately 75 miles and would intersect BLM-administered lands and result in even more impacts than Alternative A or Alternative B.
A-10; p. 8	The EA does not meet BLM's Stated Purpose and Need	EO 13212 does not contravene the state or county environmental analysis of private land projects, nor does it define "safe and environmentally sound". BLM has no authority to deny or modify the private land project. However, non-federal authorities have

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		that power. The assumption is that, through the CEQA and county permitting process, state and federal agencies comments on the private land project will be incorporated into permit conditions and approvals in order to result in an environmentally acceptable project which meets applicable laws and regulations.
A-11; p. 8	Golden eagle issues are not adequately addressed.	The Proposed Action includes temporary and net, new ground disturbance associated with road improvements and temporary disturbance associated with installation of underground transmission and communication lines. In Section 4.3.1, the EA states, "The amount of any potential foraging habitat permanently lost due to road construction is minimal and would not measurably affect golden eagle foraging opportunities. Approval of the road ROW would not be expected to have a measurable effect on local or regional golden eagle populations."
A-12; p. 9	Additional desert tortoise surveys need to be conducted.	As discussed in Section 4.3.1 of the EA, ground disturbing activities are proposed only in areas where suitable desert tortoise habitat is not present. Suitable habitat for desert tortoise occurs along segments of Jawbone Canyon Road in Township 30 S, Range 37 E, Sections 20, 22, 27; Township 30 S, Range 36 ½ E, Section 24; Township 30 S, Range 36 E, Sections 22, 24, and 28, for which the ROW request includes use of the existing road for construction related transport activities (Segment A1). No ground disturbance is proposed for this segment of the ROW request, and with the implementation of the environmental protection measures described in Section 2.2 of the EA, the ROW request would not result in adverse impacts to desert tortoise.
A-13; p. 9	Avian analysis is inadequate.	Section 4.3.1 of the the EA specifically discusses BLM Sensitive Species, including ferruginous hawk, golden eagle, burrowing owl, gray vireo, Bendire's thrasher and Le Conte's thrasher; and threatened and endangered species, including California condor, southwestern willow flycatcher, least Bell's vireo, and western yellow billed cuckoo. Section 4.3.1 of the EA also addresses migratory bird use in the area and provides an analysis of potential effects to those migratory bird species not included in the BLM Sensitive, threatened or endangered species discussions.
A-14; p. 9	Impacts to SW willowflycatcher are not adequately analyzed.	The Proposed Action includes temporary and net, new ground disturbance associated with road improvements and temporary disturbance associated with installation of underground transmission and communication lines. In Section 4.3.1, the EA states that no nesting habitat for the southwestern willow flycatcher occurs in the areas that would be disturbed by the Proposed Action.
A-15; p. 9	Construction delays could result in construction during the nesting season,	The applicant-proposed environmental protection measure, Wildlife-2 (Section 2.6.2), provides information on activities that would occur if construction outside of the nesting season is not

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	which is not addressed.	feasible. The Proposed Action would result in no adverse effects to avian species.
A-16; p. 10	Mohave ground squirrel impacts are not adequately addressed.	In Section 3.3.2, the EA states that no potential suitable habitat exists in any part of the Proposed Action area. The Proposed Action includes environmental protection measures to protect wildlife (Section 2.6.2), and with the implementation of these measures, no adverse effects to Mohave ground squirrel would occur.
A-17; p. 10	A comprehensive analysis of habitat fragmentation is not included.	The Proposed Action would include 6.77 acres of gravel road surface associated with new and improved roads, and would restore 3.12 acres of existing road surface, resulting in 3.65 acres of net new disturbance. As discussed in the Migratory Birds and Other Wildlife subsections of Section 4.3.1, the small amount of new road construction compared to the existing level of habitat fragmentation would be minimal. With implementation of the environmental protection measures included in Section 2.6, no adverse effects to wildlife would occur.
A-18; p. 11	Impacts to sensitive plant communities, specifically riparian and wash plant communities, are not addressed.	The acreage of disturbance to each vegetation community occurring in the Proposed Action area is included in Table 4.8. Section 4.3.1, on page 4-13, states that "The Proposed Action would affect approximately 0.30 acre of riparian areas and ephemeral washes."
A-19; p. 11	The project requires an EIS that evaluates the effects on the Sierra-Mojave-Tehachapi Ecotone and its long-term management goals.	Conformance with BLM Land Use Plans, including the CDCA, is discussed in Section 1.4, and throughout Section 3.0, including Section 3.17. The Proposed Action is consistent with actions and impacts anticipated in the CDCA Plan. The CDCA Plan General Guidelines recognize the need for access across public lands to permit use of State and privately owned lands and permit authorized developments on public lands.
A-20; p. 11	The cumulative wildlife analysis should include the entire Tehachapi Wind Resource Area at a minimum, rather than the 25-mile radius included in the EA.	The EA addresses the cumulative effects of the construction, operation and maintenance, closure and decommissioning of the ROW grant and all other elements of the proposed action together with other past, present, and reasonably foreseeable future actions in the vicinity of the proposed action and alternatives. As described in the EA, the limited impacts from implementation of the ROW would not result in cumulative impacts.
A-21; p. 12	The cumulative project list is incomplete.	The list of cumulative projects includes all known and reasonably foreseeable projects that could be identified. The review of those projects that would have cumulative effects in relation to the access road and collector lines have been adequately describe and analyzed. The discrepancies in project names and nomenclatures cannot be rectified with list provided. It is the BLM's conclusion that all projects required in the cumulative scenario have been described and analyzed.

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A-22; p. 12	The cumulative project list does not include reasonably foreseeable projects.	<p>Rising Tree was included in the cumulative analysis and listed in Table 5-2 and Windstar is currently under construction.</p> <p>The list of cumulative projects includes all known and reasonably foreseeable projects that could be identified. The review of those projects that would have cumulative effects in relation to the access road and collector lines have been adequately describe and analyzed. The discrepancies in project names and nomenclatures cannot be rectified with list provided. It is the BLM's conclusion that all projects required in the cumulative scenario have been described and analyzed</p>
A-23; p. 12	The compliance plans identified in the EA (SWPPP, WEAP, Weed Management Plan, etc.) are not available for public review.	BLM will receive and review the WEAP, Weed Management Plan, Fire Safety Plan and SWPPP to ensure that they are consistent with the environmental protection measures included in the EA and with all other applicable regulations. These subsequent plans are not introduced as mitigation, but standard plans that will be required to provide information to the BLM to ensure compliance.
A-24; p. 13	The EA states that the Kern County EIR for the NSR Wind Energy Project evaluated the Private Land Only alternative; however in other places it is stated that the alternative would be evaluated under CEQA in the future, as necessary.	<p>As discussed in the Staff Report to the Kern County Board of Supervisors, dated September 13, 2011, this access option was removed from the Project Description in the Final EIR. The applicant provided baseline data, such as cut and fill volumes and other information, to Kern County and subsequently elected to remove this option due to its greater impacts than the other access option.</p> <p>Please see the response to comment A-1 for a discussion of how the Proposed Action does not meet the definition of a connected action.</p>
A-25; p. 13	It is unclear if federal ESA permits have been issued or what formal consultation has occurred between BLM and USFWS. It is also unclear what permit process has been initiated through CDFG.	Section 2.7 describes "Other Permit/Authorizations" that may be required for the Proposed Action. It was determined that Consultation with USFWS was unnecessary and a CDFG Incidental Take Permit is not required for the Proposed Action because no federally or state listed species would be affected by the Proposed Action.
A-26; p. 13	The Pine Tree project was required to sponsor law enforcement to minimize OHV conflicts. The EA does not address this issue.	The applicant-proposed environmental protection measure in Section 2.6.11, Transportation-1, includes a Traffic Control Plan which will minimize conflicts between the Proposed Action and recreational OHV use in the vicinity.
A-27; p. 13	The EA is narrowly focused, does not address connected actions and does not identify	Please see the response to comment A-1 for a discussion of how the Proposed Action does not meet the definition of a connected action.

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	significant impacts, and an EIS is required.	